

Unless an exemption is documented, the sale and delivery of tangible personal property to an Illinois customer creates a legal presumption that the sale is for use in Illinois and subject to tax. See 86 Ill. Adm. Code 130.210. (This is a GIL.)

June 17, 2005

Dear Sir or Madam:

This letter is in response to your letter dated May 18, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is planning to sell broiler machines to restaurants and food distributors. The restaurants normally use broilers to cook gyro cones and sell the gyro to their customers. And the food distributors will sell the broilers bought from ABC to their customers. We'd like to seek your professional expertise to help with the following two tax questions:

1. Does ABC need to collect sales tax on the broilers sold to restaurants?
2. Does ABC need to collect sales tax on the broiler sold to food distributors?

It's greatly appreciated if you could help with the above questions at your earliest convenience. Looking forward to hearing from you.

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. In the instant case, it appears that the resale exemption may be applicable when making sales to a distributor who will in turn sell the tangible personal property. See 86 Ill. Adm. Code 130.210 and 130.1405.

Except in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. See 86 Ill. Adm. Code 130.1405 regarding requirements for a Certificate of Resale.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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